

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

1	UNITED STATES SECURITIES AND	)	Docket No. 18 C 5587
2	EXCHANGE COMMISSION,	)	
3		)	
4	Plaintiffs,	)	
5		)	
6	vs.	)	
7		)	
8	EQUITYBUILD, INC., EQUITYBUILD	)	
9	FINANCE, LLC, JEROME H. COHEN,	)	
10	AND SHAUN D. COHEN,	)	Chicago, Illinois
11		)	April 22, 2022
12	Defendants.	)	9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - VIDEOCONFERENCE STATUS  
BEFORE THE HONORABLE JOHN Z. LEE

VIDEOCONFERENCE APPEARANCES:

14	For the Plaintiff:	U.S. SECURITIES & EXCHANGE
15		COMMISSION
16		BY: MR. BENJAMIN J. HANAUER
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18		Chicago, Illinois 60604
19	For the Receiver:	RACHLIS, DUFF, PEEL & KAPLAN, LLC
20		BY: MR. MICHAEL RACHLIS
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24	For Federal Home Loan	DYKEMA GOSSETT, PLLC
25	Mortgage Corporation,	BY: MR. TODD GALE
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	Assoc., U.S. Bank, Sabal TL,	
	Midland Loan Svcs., BC57,	
	and UBS AG:,	

1 APPEARANCES (Cont'd):

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7 BERNSTEIN, SHUR, SAWYER & NELSON  
8 BY: MR. ROBERT J. KEACH  
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11 For 1839 Fund I, LLC: MR. MICHAEL O. KURTZ  
12 5630 N. Ashland Avenue, Apt 1  
13 Chicago, Illinois 60660

14 For U.S. Bank as Trustee: FOLEY & LARDNER, LLP  
15 BY: MR. ANDREW T. McCLAIN  
16 321 N. Clark St., Suite 2800  
17 Chicago, Illinois 60654

18 For Ventus Holdings, LLC LATIMER LEVAY FYOCK LLC  
19 and Ventus Merrill, LLC: BY: MS. SASKIA N. BRYAN  
20 55 West Monroe Street, Suite 1100  
21 Chicago, Illinois 60603

22 For Intervening Investors: BOODELL & DOMANSKIS, LLC  
23 BY: MR. MAX A. STEIN  
24 1 North Franklin, Suite 1200  
25 Chicago, Illinois 60606

Also Present: MR. KEVIN B. DUFF, Receiver

21 Court Reporter: MR. JOSEPH RICKHOFF  
22 Official Court Reporter  
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\* \* \* \* \*

PROCEEDINGS RECORDED BY  
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1 (Proceedings had in open court, via videoconference:)

2 THE CLERK: 18 CV 5587, United States Securities and  
3 Exchange Commission vs. Equitybuild.

4 Again, counsel, if you can please mute your phones  
5 unless you're speaking.

6 THE COURT: Can everyone else, also, not only the  
7 lawyers, but anyone else who has called in, please mute your  
8 phones.

9 (Brief pause.)

10 THE COURT: All right. So, if you're addressing the  
11 Court, please unmute yourself, since I've given you the  
12 ability to do that. And when you're not speaking, if you  
13 could keep yourself on mute, that would be appreciated.

14 So, who is appearing on behalf of the SEC today?

15 (No response.)

16 (Brief pause.)

17 THE COURT: Good morning.

18 So, I have muted everyone. Can everyone hear me?

19 (No response.)

20 (Brief pause.)

21 THE COURT: Mr. Hanauer, can you hear me?

22 MR. HANAUER: Yes, I can, your Honor. Thank you.

23 THE COURT: Very good.

24 So, who is appearing on behalf of the SEC today?

25 MR. HANAUER: Good morning, your Honor, Ben Hanauer

1 for the SEC.

2 THE COURT: Who is appearing on behalf of the  
3 receiver?

4 MR. RACHLIS: Good morning, your Honor, Michael  
5 Rachlis and Jodi Rosen Wine on behalf of the receiver. The  
6 receiver is also on this video.

7 THE COURT: All right.

8 And can the attorneys who are appearing on behalf of  
9 various investors and claimants, can you identify yourselves  
10 for the record, one at a time.

11 Here, let me see if I can --

12 MR. GALE: Good morning, your Honor.

13 THE COURT: Let's start --

14 MR. GALE: Apologize.

15 THE COURT: -- since I can -- I can see the names.  
16 Mr. McClain.

17 MR. McCLAIN: Good morning, your Honor, Andrew  
18 McClain, M-c-C-l-a-i-n, on behalf of U.S. Bank as trustee,  
19 Citibank as trustee, Wells Fargo as trustee, and Fannie Mae.

20 THE COURT: Mr. Hart?

21 MR. HART: Good morning, your Honor, David Hart on  
22 behalf of BC57, LLC.

23 THE COURT: Ms. Fogel?

24 (No response.)

25 THE COURT: We'll come back to her.

1 Mr. Stein.

2 MR. STEIN: Good morning, your Honor, Max Stein on  
3 behalf of certain individual investors.

4 THE COURT: Mr. Kurtz.

5 MR. KURTZ: Your Honor, Michael Kurtz, K-u-r-t-z, on  
6 behalf of investor 1839 Fund I, LLC.

7 THE COURT: Mr. Gale.

8 MR. GALE: Good morning, your Honor. I represent  
9 Group 1 claimant BC57, LLC. I also represent a number of  
10 claimants in other groups.

11 THE COURT: Mr. Keach.

12 MR. KEACH: Yes, your Honor, Robert Keach, Bernstein  
13 Shur, for BC57, LLC.

14 THE COURT: Ms. Bryan?

15 MS. BRYAN: Good morning, your Honor, Saskia Bryan on  
16 behalf of Ventus -- (audio transmission interrupted) -- Ventus  
17 Holdings and Ventus Equities.

18 THE COURT: Ms. Bryan, can you repeat that, please.  
19 We had a hard time hearing you.

20 MS. BRYAN: I'm sorry, Saskia, which is S-a-s-k-i-a,  
21 Bryan, B-r-y-a-n, on behalf of the Ventus, V-e-n-t-u-s,  
22 parties.

23 THE COURT: Thank you.

24 Ms. Mandeville?

25 (No response.)

1 THE COURT: Ms. Mandeville, you are still on mute.

2 MS. MANDEVILLE: Good morning. I'm a claimant.

3 THE COURT: Okay.

4 I have someone with the name Marti, no last name.

5 MS. LaTOUR: Okay. This is Marti LaTour. I'm sorry,  
6 can you hear me now?

7 THE COURT: Yes.

8 MS. LaTOUR: This is Marti LaTour, investor under  
9 LaMore, LLC.

10 THE COURT: Are there any other counsel of record who  
11 would like to enter their appearance today? Please do so now.

12 (No response.)

13 THE COURT: Very good.

14 So, I like to have these status hearings periodically  
15 to make sure that we're on track; and, also, to make sure that  
16 things are not falling through the cracks, and that I address  
17 everyone's concerns with regard to the motions that have been  
18 filed.

19 So, Mr. Rachlis, what I have pending on my list is  
20 that the issue with regard to single-claim properties is still  
21 being briefed, and we have a status hearing set for May 6th  
22 with regard to that. I also have a note that the Group 1  
23 claims process is ongoing.

24 Mr. Rachlis, can you give me an update on kind of  
25 where everything stands with regard to that. I know that

1 there have been some additional filings as of late.

2 UNIDENTIFIED SPEAKER: Oh, I just put something on  
3 here. My mother had an investment that there's a huge -- it  
4 was --

5 THE COURT: Excuse me, sir.

6 UNIDENTIFIED SPEAKER: -- it was a Ponzi scheme. A  
7 real estate thing. And --

8 THE COURT: Sir, sir --

9 UNIDENTIFIED SPEAKER: -- it's been dragging along  
10 for a while.

11 THE COURT: Sir --

12 UNIDENTIFIED SPEAKER: Suing Wells Fargo as a  
13 co-conspirator effectively and it's going through --

14 THE COURT: Mr. Rachlis?

15 (No response.)

16 THE COURT: Mr. Rachlis, can you hear me?

17 (No response.)

18 THE COURT: Mr. Rachlis, can you give me an update on  
19 where things stand, please.

20 MR. RACHLIS: Yes.

21 I'll start where your Honor started, with respect to  
22 the solo-lien or the single-lien properties. With respect to  
23 those, we are continuing our review of those items. In  
24 particular, your Honor will recall that there were six  
25 subpoenas that were sent out towards the end of the year of

1 2021. We have received responses, which appear to be  
2 complete, from five of six of those. However, one remains  
3 outstanding, which is an important one related to -- that was  
4 sent to Corevest.

5 We understand that -- we've been following up on that  
6 and there -- we're hoping -- we understand that some response  
7 to that subpoena has been provided to counsel for Midland,  
8 who -- I don't know if they're on this call or not. But  
9 they're one of the interested investors that have 26 to 28 of  
10 the single-lien properties. And, so, we are hoping that we're  
11 going to be able to have those documents forwarded to us  
12 shortly. So, that's one important outstanding issue that  
13 remains.

14 Our review is continuing, both the documents  
15 produced -- which that review has been substantial, but  
16 there's still some work that remains to be done on that. And  
17 that's outside of just getting this last subpoena responded  
18 to.

19 So, in terms of being able to provide a position  
20 statement on those, we know that there's currently a April  
21 29th date, I believe, that's on calendar. We are proposing  
22 that that date be extended to June 3rd, which is about 30  
23 days, more or less, that would allow hopefully for the  
24 completion of the production pursuant to the subpoena. You  
25 know, we don't know exactly how much material is out there,



1 but assuming that it is a sort of reasonable amount, we're  
2 hoping that we're going to be able to, within that time  
3 period, be able to review and provide the position statement  
4 at that time.

5 THE COURT: So, that's --

6 MR. RACHLIS: So, they're --

7 THE COURT: So, that's --

8 MR. RACHLIS: Sorry.

9 THE COURT: So, that's with regard to the single-  
10 claim properties issue, right?

11 MR. RACHLIS: Yes, it is.

12 And sort of as a result of that -- your Honor  
13 mentioned a couple -- the briefing on that. I believe the  
14 briefing on the issue that was raised was completed, I  
15 believe, but there's still these issues that remain.

16 And in terms of a May 6th date, I'm not sure that a  
17 status conference on those issues will be productive, given  
18 what I've just reported to the Court on those issues. So, we  
19 might wish to move that to shortly perhaps either before or  
20 just after the proposed June 3rd date to further inform the  
21 Court as to whether -- where that all sits.

22 THE COURT: So, can you --

23 MR. McCLAIN: Your Honor --

24 THE COURT: Hold on for a second, please.

25 Mr. Rachlis, can you explain in a bit more detail why

1 you need the documents that you subpoenaed.

2 MR. RACHLIS: Yes, your Honor.

3 Your Honor will recall that originally the subpoenas  
4 were issued primarily to understand the underwriting and due  
5 diligence efforts that went into these various loans. That  
6 information is something that the receiver believes is  
7 appropriate to review in order to understand whether or not  
8 there's possible red flags or issues associated with avoidance  
9 claims or inquiry notice types of issues that would need to be  
10 raised consistent with the Court's direction in regards to the  
11 process where if there is an avoidance claim that's going to  
12 be raised, there would be an interrogatory form type of  
13 listing of those facts that would be then provided to the  
14 investor -- to the institutional lender here, who would then  
15 be able to take discovery on those issues.

16 So, long story short, it deals with the due diligence  
17 process and the information that they had associated with  
18 underwriting these loans that were made directly to possible  
19 avoidance or fraudulent types of conveyance claims.

20 THE COURT: All right.

21 Someone wanted to make a statement?

22 MR. McCLAIN: Yes, your Honor. Andrew McClain,  
23 M-c-C-l-a-i-n, on behalf of U.S. Bank as trustee, who has two  
24 loans that are subject to the single-claims process. Midland  
25 is the other institutional lender. I'm not sure if Midland's

1 counsel is on the line.

2 But, your Honor, just to follow up Mr. Rachlis, the  
3 motion at issue that was referenced is our motion for  
4 clarification, which is Docket No. 1 -- excuse me, 1111. And  
5 that is fully briefed. We had a status hearing on February  
6 8th on that, and the Court indicated that it was going to  
7 issue a ruling on that. So, that's the outstanding motion.

8 And the issue in that motion is when the 60-day  
9 discovery should begin. It's our position that the Court had  
10 indicated that the 60-day discovery between the receiver and  
11 the institutional lenders would begin after the receiver files  
12 his position statement, which is currently set for April 29th.

13 We would oppose a further extension of this process.  
14 The Court entered its minute order on November 18th, Docket  
15 No. 1090, in which the Court stated this process shall begin  
16 immediately and then set some various dates, including the  
17 dates for the third-party subpoenas, which Mr. Rachlis  
18 referenced, as well as discovery from the institutional  
19 lenders. And in that minute order, the Court did also set the  
20 April 29th date for the position statement from the receiver.

21 So, we agree that there's outstanding issues that  
22 need to be resolved, namely our motion for clarification; but,  
23 we do maintain the position that the 60-day discovery should  
24 begin after the receiver files its position statement. And we  
25 would request that the position statement be filed on April

1 29th, as the Court ordered in November.

2 THE COURT: Okay.

3 With regard to the date, the receiver's request for  
4 additional time to file the position paper, at this point that  
5 request is denied. I think we need to get this process going.

6 If the receiver, based upon additional discovery,  
7 believes it needs to supplement its position paper as the  
8 process goes on, it may. But I don't want to delay things any  
9 further than things have already gone on with regard to the  
10 single-claim properties.

11 So, I want the receiver to set forth his position  
12 paper as of April 29th, '22. If the receiver wants to title  
13 it "Initial Position Paper," that's fine, so that it's clear  
14 that I'm giving the receiver an opportunity to supplement it.  
15 But at this point in time, I want that position paper filed,  
16 so that we at least -- so that I and everyone else can at  
17 least know what the initial issues are going to be as the case  
18 moves -- as the claims process moves forward with regard to  
19 the single-claim properties.

20 So, with regard to the Group 1 claims process, is  
21 counsel for BC57 here with us today?

22 MR. GALE: Yes, your Honor, Todd Gale for BC57.

23 THE COURT: So, Mr. Gale, BC57 has requested a  
24 hearing as to the lien priority dispute and the avoidance  
25 claims. And I guess my question is, why do you think a

1 hearing would be helpful in my consideration of the issues?

2 MR. GALE: We believe, your Honor, that a hearing  
3 would be helpful because there are many very fact-driven  
4 inquiries that have been raised in the briefings by the  
5 parties. Inquiry notice is an example. The intent of the  
6 parties and what everyone understood the documents to mean  
7 that were being signed in the refinancing transaction with my  
8 client BC57.

9 At this point in time, your Honor, what we think is  
10 that the Court would benefit by hearing testimony from at  
11 least two different parties. One would be Near North Title.  
12 Near North was the closing agent, the settlement agent, the  
13 title agent for the refinancing transaction where BC57  
14 refinanced the loans on the five properties that are at issue  
15 in Group 1.

16 No one took Near North Title's deposition in this  
17 case. For whatever reason, the SEC, the receiver and certain  
18 investor lenders chose instead to take the deposition of  
19 Lincoln Land Services. Lincoln Land Services is also a title  
20 agent and settlement agent and closing agent, but they are not  
21 licensed in Illinois. So, when Bloomfield Capital reached out  
22 to Lincoln Land Services, Lincoln Land Services lined up Near  
23 North Title.

24 We put in declarations in support of our opening  
25 position statement in late January from two individuals at

1 Near North Title, one who was the person who was responsible  
2 for underwriting the transaction, and the other one is a  
3 person who was the closing and settlement agent. We certainly  
4 put in the information there that we thought that was  
5 important to support the claims that we made and to support  
6 our arguments in that position statement.

7 But, your Honor, we want to be very careful here to  
8 make sure that we get all facts before the Court for these  
9 very factually-driven inquiries. And we want to make sure  
10 that we build a full and complete record in this court.

11 So, Near North Title is one of the things we think  
12 would be interested -- that would be of interest to the Court.  
13 And before I go any further, I should probably pause and give  
14 you the chance to respond to anything I've said so far.

15 THE COURT: Yes.

16 I guess my question is: Do you think that -- you say  
17 that it's very fact-laden, but do you think that there will  
18 be -- the parties will have factual disputes as to any of  
19 these issues?

20 MR. GALE: Well, it's interesting, your Honor. I  
21 mean, from our perspective and as we wrote into our briefs, we  
22 think that our facts -- the facts clearly favor us and that  
23 the Court should find in our favor. That's no surprise to  
24 anyone on this call or anyone who's involved in litigation  
25 ever.

1           From our perspective, I think that it's important  
2           that these particular issues that are central to the  
3           determination that the Court is going to make, we, consistent  
4           with our right to due process, want to make sure that we are  
5           able to make very full and complete presentation of all of the  
6           facts that support what we have to say.

7           Obviously, we've read what was written into the  
8           status -- the joint status report by the SEC, by the receiver,  
9           by certain investor lenders. The point that we're trying to  
10          make, your Honor, is on these particular issues, what the  
11          parties did, why the parties took the steps they did, and very  
12          importantly, how those steps comported with industry custom  
13          and practice in refinancing transactions just like this one,  
14          we wanted to be sure that your Honor is able to hear from  
15          people who were actually involved in the transaction and also  
16          from our expert witness Bush Nielsen, who talks about industry  
17          custom and practice.

18          THE COURT: I think that as I go through the  
19          materials, you know, I think that I will have to see whether  
20          or not I think that there will be any factual disputes.  
21          Absent any actual material disputes, I don't think that a  
22          hearing would be particularly helpful. And with regard to due  
23          process, the parties have had an opportunity to present their  
24          facts in their various position statements.

25          So, I guess the long and short of it is that unless I

1 think that a hearing would be helpful for me to resolve any  
2 issues that the parties -- resolve any factual disputes that  
3 the parties may have with regard to the record in this case  
4 that would require me to assess credibility and weigh live  
5 testimony, I am not going to, as a matter of course, have an  
6 evidentiary hearing unless one is needed.

7           So, that's a long way of saying, Mr. Gale, that as I  
8 go through the materials, I will see whether or not an  
9 evidentiary hearing would be helpful or necessary in making  
10 the determinations that I need to make. So, the request is  
11 taken under advisement as I go through the materials.

12           So, the --

13           MR. GALE: Thank you, your Honor.

14           Can I ask one follow-up question, please? I don't  
15 mean to belabor this. I know that you have other things on  
16 your docket this morning.

17           THE COURT: Go ahead.

18           MR. GALE: I hear and understand what you're saying.  
19 How about oral argument? Does your Honor have any  
20 understanding at this point in time whether the Court intends  
21 to hold oral argument, short of an evidentiary hearing?

22           THE COURT: Again, I think it's going to be, as I  
23 kind of wade through all the materials, if I think that oral  
24 argument on particular issues will be helpful, I will reach  
25 out to the parties and ask them for it. But as far as kind of



1 a general, wide-open oral argument, I don't intend to have  
2 one. But if I do have oral argument, I will let the  
3 parties -- I will issue an agenda that identifies the  
4 particular issues that I would want specific parties to  
5 address.

6 MR. GALE: I understand, your Honor. Thank you.

7 THE COURT: So, the other pending motions I have on  
8 my list are ECF 1065, the motion to intervene by various  
9 investor lenders.

10 Mr. Rachlis, is that still pending?

11 MR. RACHLIS: I don't believe so. I thought that  
12 that one was resolved by stipulation.

13 THE COURT: Okay.

14 The 13th fee application?

15 MR. RACHLIS: Yes. That still remains, as well.  
16 Yes, that one is fully briefed, as well as -- and the 14th  
17 application, which was recently filed, which has no briefing  
18 schedule at this point, your Honor.

19 THE COURT: Okay.

20 And with regard to Ventus, I believe that the motion  
21 to designate interlocutory order as final judgment is still  
22 pending; is that correct?

23 MR. RACHLIS: Yes, your Honor.

24 MS. BRYAN: Yes, your Honor.

25 THE COURT: Is there anything else pending that's on

1 my plate, Mr. Rachlis, as far as you can tell?

2 MR. RACHLIS: The only -- it's not directly on your  
3 plate, your Honor; but, as your Honor knows, the fee  
4 allocation motion, which is currently pending before Judge  
5 Kim, is on the docket. Let's say it that way. So, we're  
6 cognizant that that's there. And that has been fully briefed,  
7 and we know that that is pending before Judge Kim.

8 THE COURT: All right. Very good.

9 Is there anything else, Mr. Rachlis, that you would  
10 like to address today?

11 MR. RACHLIS: Your Honor, no. The only thing -- I  
12 don't know -- since we're meeting today as to issues, I don't  
13 know if we need the May 6th date or not, your Honor, in terms  
14 of a status date or if you want to move that to a different  
15 date based on whatever's been on here today.

16 THE COURT: Let's keep that date. I want to take a  
17 look at the position paper and then we'll see.

18 All right. Is there anything else that the SEC would  
19 like to address, Mr. Hanauer?

20 MR. HANAUER: Yeah, just very briefly, your Honor, on  
21 the issue of the need for an evidentiary hearing and  
22 witnesses.

23 I'd just like to make it clear for the record that  
24 the two witnesses that Mr. Gale alluded to BC57 wanting to put  
25 on at the evidentiary hearing, someone from the title company

1 and then their expert witness, BC57 did put in declarations  
2 from the title company witnesses and put in a report from  
3 their expert witness. No one put in any competing  
4 declarations on any of those points or sought need for  
5 additional testimony from those witnesses.

6 So, from the SEC's point of view, BC57 had more than  
7 enough opportunity to put in evidence from the witnesses it  
8 now wants to present live, and there was no response to those  
9 witnesses such that we don't think there could be any disputed  
10 facts flowing from those witnesses.

11 THE COURT: All right.

12 Anything else --

13 MR. STEIN: Your Honor, this is --

14 THE COURT: Anything else that --

15 MR. HANAUER: No. Thank you, your Honor.

16 THE COURT: Anything else that other counsel would  
17 like to address today?

18 MR. STEIN: Yes, your Honor. This is Max Stein. I'm  
19 counsel for certain of the individual investor lenders.

20 I just wanted to echo what Mr. Hanauer just said.  
21 The parties had the opportunity to seek a deposition of the  
22 Near North Title agents and chose not to do so. BC57 chose  
23 not to present any additional evidence through declaration or  
24 otherwise. To now have them bring a witness in would be to  
25 allow them to correct, seemingly, some problems or

1 deficiencies they feel they have in the evidence they've  
2 already put in front of your Honor. And that should not be  
3 allowed.

4 THE COURT: All right.

5 MR. STEIN: The other thing, your Honor, I would  
6 ask -- and I recognize as I ask this it's an unfair question.  
7 But it is an unfair question I get fairly regularly from my  
8 clients, so I at least want to have posed it to you, which is:  
9 Do you have any idea when you might be moving to a ruling on  
10 the priority issues in Group 1?

11 THE COURT: My goal is to have a ruling with regard  
12 to Group 1 within -- at the latest, by early June.

13 MR. STEIN: I greatly appreciate that information,  
14 your Honor.

15 THE COURT: All right.

16 MR. GALE: Your Honor, I don't want to stretch this  
17 out. Can I just say a couple of sentences about what Mr.  
18 Hanauer and what Mr. Stein said?

19 THE COURT: Mr. Gale, there's no need. I understand  
20 everyone's arguments.

21 Is there anything else --

22 MR. GALE: Yes, sir.

23 THE COURT: -- that counsel of record would like to  
24 state today?

25 (No response.)

1 THE COURT: All right.

2 For the investors on the line, on our next status  
3 hearing, I will provide a process where, once again, to the  
4 extent that the investors would like -- any of the individual  
5 investors would like -- to make a statement, they can reach  
6 out to Mr. Rachlis and the receiver and let him know. And we  
7 will send out an agenda before the status so that individual  
8 investors can be recognized. Okay? Today's hearing just --  
9 that was not the purpose of today's hearing. But, certainly,  
10 for the hearing for the next status hearing, we'll institute  
11 that procedure.

12 All right. Very good. Thank you very much.

13 MR. RACHLIS: Thank you, your Honor.

14 MR. GALE: Thank you, your Honor.

15 \* \* \* \* \*

16

17 I certify that the foregoing is a correct transcript from the  
18 record of proceedings in the above-entitled matter.

19

19 /s/ Joseph Rickhoff  
20 Official Court Reporter

May 10, 2022

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